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**OFFICE OF PETITIONS**

MILES & STOCKBRIDGE PC  
1751 PINNACLE DRIVE  
SUITE 500  
MCLEAN VA 22102-3833

In re Application of	:	
Burbank et al.	:	
Application No. 10/041,949	:	
Patent No.: 6,979,309	:	DECISION ON PETITION
Filed: January 7, 2002	:	PURSUANT TO
Issued: December 27, 2005	:	37 C.F.R. § 1.28(c)
Attorney Docket No.: T4342-	:	
14198US32	:	
Title: SYSTEMS AND METHODS FOR	:	
PERFORMING BLOOD PROCESSING	:	
AND/OR FLUID EXCHANGE	:	
PROCEDURES	:	

This is a notice regarding your request for acceptance of a fee deficiency submission pursuant to 37 C.F.R. § 1.28, received on November 3, 2009. On September 1, 1998, the Court of Appeals for the Federal Circuit held that 37 C.F.R. § 1.28(c) is the sole provision governing the time for correction of the erroneous payment of the issue fee as a small entity. See DH Technology v. Synergystex International, Inc. 154 F.3d 1333, 47 USPQ2d 1865 (Fed. Cir. Sept. 1, 1998).

The Office no longer investigates or rejects original or reissue applications under 37 C.F.R. § 1.56. 1098 Off. Gaz. Pat. Office 502 (January 3, 1989). Therefore, nothing in this notice is intended to imply that an investigation was done.

Petitioner has identified the particular type of fee that was erroneously paid as a small entity, the small entity fee that was

actually paid, the deficiency owed amount, and the total deficiency payment owed.

Petitioner has failed to identify when the small entity fee was actually paid, however that requirement is hereby waived, *sua sponte*.

The deficiency payment will be deducted from Deposit Account number 50-1165 in due course.

Your fee deficiency submission pursuant to 37 C.F.R. § 1.28(c) is hereby accepted. The petition is **GRANTED** accordingly.

This application is no longer entitled to small entity status. Accordingly, all future fees paid in this patent must be paid at the large entity rate.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225.<sup>1</sup>

/Paul Shanowski/  
Paul Shanowski  
Senior Attorney  
Office of Petitions

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<sup>1</sup> Petitioner will note that all practice before the Office should be in writing, and the action of the Office will be based exclusively on the written record in the Office. See 37 C.F.R. § 1.2. As such, Petitioner is reminded that no telephone discussion may be controlling or considered authority for Petitioner's further action(s).